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Feb. 5

CONCORD, N.H.

Major General Charles F. Rowan
The Adjutant General
State House

Dear General Rowan:

In a letter of January 28, 1953, you have referred to 150 individuals who work under your supervision in connection with the accounting for, maintenance and servicing of United States property issued for the use of the National Guard of New Hampshire and who are federally paid, and you have inquired whether such personnel are eligible for membership in the State Employees Retirement System. We answer your inquiry in the negative.

We invite your attention to R. L. c. 27-A, as inserted by Laws 1945, c. 193, as amended. Examination of this statute will disclose that membership in the State Employees Retirement System is limited to employees of:

"the state of New Hampshire or any department, commission, institution or agency of the state government by which an employee is paid through the office of the state treasurer. (c. 7 III; see also c. 3).

The question under consideration will be seen, then, to resolve itself into whether or not the personnel concerned are employees of the State of New Hampshire or any of its component organs described within the foregoing definition. In treating thus of the question, we may disregard for the moment the very essential requirement that qualifying employees must be "paid through the office of the state treasurer".

Two different appellate courts of the United States have recently been called upon to determine if caretakers (and we understand caretakers to be representative of the personnel under consideration) are employees of the federal government so that persons injured by their negligence

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funds might also be made available for the state's contribution to the retirement system funds.

"If such action is approved by the federal authorities having authority to approve the same and from whom federal funds are received for the administration of the unemployment compensation division of the bureau of labor . . . such sums (i. e., the state's share in respect to each employee) may be likewise transferred from said federal funds to cover employees of said [division]. R. L. c. 27-A, s. 13 VI.

There are, as we know, no comparable provisions in respect to the personnel under consideration; indeed, there could not be since the funds from which they are paid are never in the control of the State, and could not be "transferred" by it.

Upon a consideration of all the circumstances, then, we would rule that the personnel the subject of your inquiry are not eligible for membership in the State Employees Retirement System.

Very truly yours,

Warren E. Waters
Assistant Attorney General

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